No. 14,394

United States Court of Appeals

For the Ninth Circuit

WILLIAM RADOVICH,

Appellant,

vs.

NATIONAL FOOTBALL LEAGUE, et al.,

Appellees.

Appeal from the United States District Court,
Northern District of California,
Southern Division.

REPLY BRIEF OF APPELLANT.

MAXWELL KEITH,
111 Sutter Street, San Francisco 4, California,
Attorney for Appellant.

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I.

U. S. v. INTERNATIONAL BOXING CLUB IS A HOLDING THAT ONLY BASEBALL IS EXEMPT FROM THE OPERATIONS OF THE ANTITRUST LAWS.

No attempt by appellee National Football League (hereinafter called N.F.L.) here to quote from the minority opinions of the Supreme Court (N.F.L. Brief, pp. 30, 39) and to cloud the holding of this determining decision can hide the fact that the Supreme Court in *U. S. v. International Boxing Club of New York, Inc.*, (Jan. 31, 1955) 1954 Trade Cases, 67,941 has ruled that only baseball has been given an implied legislative exemption from the antitrust laws.

Appellee throughout its brief fails to recognize the principle that the Court cannot legislate exemptions

under the antitrust laws. The Supreme Court in the *Toolson* case recognized an implied exemption because Congress had failed to act with the *Federal Baseball League* case standing as law.

The plain fact of the matter is that the Supreme Court failed to go where appellees ask this Court to go. It held specifically that "sports" were within the antitrust laws. At 1954 Trade Cases, 67,941, page 7074 it stated:

> "It follows that *stare decisis* cannot help the defendants here; for, contrary to their argument, *Federal Baseball* did not hold that all businesses based on professional sports are outside the scope of the antitrust laws. The issue confronting us is, therefore, not whether a previously granted exemption should continue but whether an exemption should be granted in the first instance. And that is for Congress to resolve. See United States v. South-Eastern Underwriters Assn. (1944-45 Trade Cases, Pr. 57,253) 322 U.S. 533, 561.)"

Failing to obtain an exemption and granting the statement of the Supreme Court in *U. S. v. Employing Plasterers' Assn.* (N.F.L. Brief, pp. 20-21) it would appear that appellees must go to a hearing on the merits.

II.

PROOF OF A PUBLIC HARM IS MADE WHEN IT IS ESTABLISHED THAT DEFENDANTS HAVE VIOLATED THE ANTITRUST LAWS.

Appellees ask this Court to make a further act of legislation. They seek to have this Court hold that as

a matter of law the complaint fails to establish impact on the public. Appellant answers this as follows: (1) The District Court placed its decision squarely on the holding of the *Toolson* case, now inapplicable to other sports. (Tr. 64.) (2) The heart of the appellant's action is a conspiracy to boycott and monopolize to thwart the All-America Conference. It has been taught that a conspiracy to boycott is not the manner in which those with financial power can deal with others. *F. T. C. v. Fashion Originator's Guild,* 61 S.Ct. 703. See also *U. S. v. King,* 229 Fed. 275. Upon proof of this conspiracy, it will have been proved that defendants have violated the antitrust laws. Upon this showing, it will have been proved that appellees have acted contrary to the expressed will of Congress in its desire to protect the public.

The 10th Circuit in the *Shotkin* decision (N.F.L. Brief, pp. 5-8) merely repeated the principle that a private litigant must establish a violation of the anti-trust laws to warrant recovery.

It is respectfully submitted that Congress has given redress to those who have suffered from conspiracies to boycott.

Dated, San Francisco, California,
March 7, 1955.

MAXWELL KEITH,
Attorney for Appellant.